

Lorenzo D. Trevizo

NAME

K90776

PRISON NUMBER

P.O. Box 2500

CURRENT ADDRESS OR PLACE OF CONFINEMENT

Jacaville, CA. 95696

CITY, STATE, ZIP CODE

FILED

MAR 17 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY RM DEPUTYUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

2354	<input checked="" type="checkbox"/>	1983
FILING FEE PAID		
Yes	<input type="checkbox"/>	No <input checked="" type="checkbox"/>
HYP MOTION FILED		
Yes	<input type="checkbox"/>	No <input checked="" type="checkbox"/>
COPIES SENT TO		
Court	<input checked="" type="checkbox"/>	ProSe

LORENZO D. TREVIZO

(FULL NAME OF PETITIONER)

PETITIONER

v.

Knowles, WARDEN (cm-p)(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

The Attorney General of the State of
California, Additional Respondent.

'08 CV 0493 DMS BLM

Civil No

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: San Bernardino Superior Court, State of California.
2. Date of judgment of conviction: 3-18-05
3. Trial court case number of the judgment of conviction being challenged: FWV031741
4. Length of sentence: 6 years

CR

5. Sentence start date and projected release date: 3-18-05

6. Offense(s) for which you were convicted or pleaded guilty (all counts):
P.C. § 12021.1; V.C. § 2800.2(A).

7. What was your plea? (CHECK ONE)

(a) Not guilty ☐

(b) Guilty ☒

(c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

(a) Jury ☐

(b) Judge only ☐

N/A

9. Did you testify at the trial?

☐ Yes ☐ No

N/A

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?

☐ Yes ☐ No

N/A

11. If you appealed in the California Court of Appeal, answer the following:

(a) Result: N/A

(b) Date of result (if known): _____

(c) Case number and citation (if known): _____

(d) Names of Judges participating in case (if known): _____

(e) Grounds raised on direct appeal: _____

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

(a) Result: N/A

(b) Date of result (if known): _____

(c) Case number and citation (if known): _____

(d) Grounds raised: _____

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result: N/A
- (b) Date of result (if known): _____
- (c) Case number and citation (if known): _____
- (d) Grounds raised: _____
- _____
- _____
- _____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?
☒ Yes ☐ No

15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number (if known): N/A
- (b) Nature of proceeding: SEE ATTACHED STATE COURT WRIT -- RECORD
- (c) Grounds raised: _____
- _____
- _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No
- (e) Result: _____
- (f) Date of result (if known): _____

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?
☒ Yes ☐ No

17. If your answer to #16 was "Yes," give the following information:

- (a) **California Court of Appeal** Case Number (if known): N/A
- (b) Nature of proceeding: _____
- (c) Names of Judges participating in case (if known) _____
- (d) Grounds raised: _____
- (e) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No N/A
- (f) Result: _____
- (g) Date of result (if known): _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?

☐ Yes ☐ No

19. If your answer to #18 was "Yes," give the following information:

- (a) **California Supreme Court** Case Number (if known): N/A
- (b) Nature of proceeding: _____
- (c) Grounds raised: _____
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No N/A
- (e) Result: _____
- (f) Date of result (if known): _____

20. If you did **not** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

N/A

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (If "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? _____

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: _____

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUND FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** CUNNINGHAM CLAIM; SEE ATTACHED.
Writ FOR CLARITY OF EXHAUSTED CLAIM.

Supporting FACTS: _____

Id.

Did you raise **GROUND ONE** in the **California Supreme Court**?

☒ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): _____

(2) Case number or citation: _____

(3) Result (attach a copy of the court's opinion or order if available): _____

(b) **GROUND TWO:**

Id

Supporting FACTS:

Id.

Did you raise **GROUND TWO** in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): _____

(2) Case number or citation: _____

(3) Result (attach a copy of the court's opinion or order if available): _____

(c) **GROUND THREE:** _____

Id

Supporting FACTS: _____

Id

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): _____
- (2) Case number or citation: _____
- (3) Result (attach a copy of the court's opinion or order if available): _____

(d) **GROUND FOUR:** _____

Id

Supporting FACTS: _____

Id

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): _____

(2) Case number or citation: _____

(3) Result (attach a copy of the court's opinion or order if available): _____

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Name(s) of judges (if known): _____

(f) Grounds raised: _____

(g) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: WAYNE M. ROZENBERG

(b) At arraignment and plea: Id

(c) At trial: NO TRIAL

(d) At sentencing: WAYNE M. ROZENBERG

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

N/A

(b) Give date and length of the future sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☐ No

N/A

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:



Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR



Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court: 3-12-08

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

N/A

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

3-12-08

(DATE)

For Jugo

SIGNATURE OF PETITIONER

S154602

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re LORENZO D. TREVIZO on Habeas Corpus

The petition for writ of habeas corpus is denied.

Werdegar, J., was absent and did not participate.

**SUPREME COURT
FILED**

JAN - 3 2008

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

MC-275

LORENZO D. TREVILO
 Name LORENZO
 Address CMF P.O. BOX 2500
VACAVILLE, CA 95696-2500
 CDC or ID Number K-90776

CALIFORNIA SUPREME
COURT
 (Court)

PETITION FOR WRIT OF HABEAS CORPUS

LORENZO D. TREVILO
 Petitioner
 vs.
 SUE HUBBARD, WARDEN
 Respondent

No. _____
 (To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

RECEIVED

JUL 13 2007

CLERK SUPREME COURT

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☐ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): N/A

1. Your name: LORENZO D. TREVIZO
 2. Where are you incarcerated? CA. M&D. FAC.
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

CONCEALED WEAPON / EVADING PEACE

- b. Penal or other code sections: P.C. 12021.1; VC. 2800.2(A)

- c. Name and location of sentencing or committing court: SAN BERNARDENO SUPERIOR COURT

- d. Case number: FWVD31741

- e. Date convicted or committed: 3/18/05

- f. Date sentenced: 3/18/05

- g. Length of sentence: 6 YEARS

- h. When do you expect to be released? _____

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

WAYNE ROZENBERG

4. What was the LAST plea you entered? (check one)

☐ Not guilty ☒ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have? N/A

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

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6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

PETITIONER RE-INCORPORATES HIS ARGUMENTS AS SET FORTH IN THE HABEAS CORPUS FILED IN THE SUPERIOR COURT OF SAN BERNARDINO COUNTY AND THE FOURTH APPELLATE DISTRICT, DIVISION TWO.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

SEE ATTACHED GROUNDS FOR RELIEF.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

PEOPLE V. BANKS (2007); PEOPLE V. DIAZ (2007); SEE ALSO ~~SEVERAL~~ SUPPORTING ARGUMENTS IN ATTACHED ADDITIONAL PAGES.

7. Ground 2 or Ground _____ (if applicable):

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SEE ADDITIONAL PAGES

a. Supporting facts:

SEE ADDITIONAL PAGES

b. Supporting cases, rules, or other authority:

SEE ADDITIONAL PAGES

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

N/A

b. Result

c. Date of decision:

d. Case number or citation of opinion, if known:

e. Issues raised: (1)

(2)

(3)

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No. If yes, give the following information:

a. Result

b. Date of decision:

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

N/D DELAY -- NEW SUPREME COURT RULING

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

N/A

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No. N/A
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or **issue** in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

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13. a. (1) Name of court: N/A
 (2) Nature of proceeding (for example, "habeas corpus petition"): _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____
- b. (1) Name of court: _____
 (2) Nature of proceeding: _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

NO DELAY -- NEW SUPREME COURT RULING

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

SEE ATTACHED SUPERIOR COURT AND APPELLATE COURT IDEALS.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

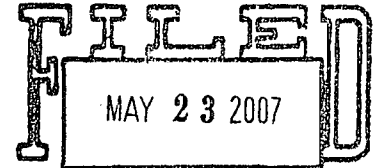
Date: 6-21-07

[Signature]

(SIGNATURE OF PETITIONER)

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER



COURT OF APPEAL FOURTH DISTRICT

IN re LORENZO D. TREVIZO

E043064

on Habeas Corpus.

(Super.Ct.Nos. FWV031741 &
SWHSS9308)

The County of San Bernardino

THE COURT

The petition for writ of habeas corpus is DENIED.

MILLER

Acting P.J.

cc: See attached list

COPY

MC-275

Name LORENZO D. TREVILOAddress CMF P.O. BOX 2500VACAVILLE, CA 95696-2500CDC or ID Number K-90776

FOURTH DISTRICT COURT OF
APPEAL, DIVISION 2
 (Court)

PETITION FOR WRIT OF HABEAS CORPUS

<u>LORENZO D. TREVILO</u> Petitioner vs. <u>SUE HUBBARD, WARDEN</u> Respondent
--

No. _____
 (To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

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This petition concerns:

- ☐ A conviction
 ☐ Parole
☒ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☐ Prison discipline
☐ Other (specify): N/A

1. Your name: LORENZO D. TREVIZO
 2. Where are you incarcerated? CA. MCD. FAC.
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

SEE ATTACHED SUPERIOR COURT WRIT FOR FULL INFORMATION.

- b. Penal or other code sections: Id.

- c. Name and location of sentencing or committing court: Id.

- d. Case number: _____

- e. Date convicted or committed: _____

- f. Date sentenced: _____

- g. Length of sentence: _____

- h. When do you expect to be released? MARCH 2009

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

SEE ATTACHED SUPERIOR WRIT; EXHIBIT A

4. What was the LAST plea you entered? (check one)

☐ Not guilty ☒ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

N/A

6. GROUNDS FOR RELIEF

MC-275

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

PETITIONER RE-INCORPORATES HIS ARGUMENTS AS SET FORTH IN THE HABEAS CORPUS FILED IN THE SUPERIOR COURT, COUNTY OF SAN BERNARDINO

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

THE TRIAL COURT MIS-STATED PETITIONER'S GROUNDS FOR RELIEF. PETITIONER'S ARGUMENT IS THAT IMPOSITION OF THE UPPER TERM AS TO HIS SENTENCE, AND UTILIZING THE SAME ELEMENT USED TO IMPOSE THE UPPER TERM TO BE USED TO ENHANCE AND DOUBLE HIS PRISON TERM, VIOLATES CUNNINGHAM V. CALIFORNIA. THEREFORE, PETITIONER REQUESTS THAT HIS WRIT BE GRANTED AS HE IS ENTITLED TO RELIEF AS SET FORTH UNDER SUPREME COURT PRECEDENT.

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

SEE ATTACHED SUPERIOR COURT WRIT FOR ALL CASES AND AUTHORITY RELIED UPON.

7. Ground 2 or Ground _____ (if applicable):

MC-275

SEE ATTACHED

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☒ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

N/A

b. Result

c. Date of decision:

d. Case number or citation of opinion, if known:

e. Issues raised: (1)

(2)

(3)

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No. If yes, give the following information:

a. Result

b. Date of decision:

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

DSL, SENTENCING PROVISION, NEWLY DECLARED UNCONSTITUTIONAL

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No. N/A
Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

MC-275

13. a. (1) Name of court: N/A
 (2) Nature of proceeding (for example, "habeas corpus petition"): _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____
- b. (1) Name of court: _____
 (2) Nature of proceeding: _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (Attach order or explain why unavailable): _____
 (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

NO DELAY -- NEW SUPREME COURT RULING

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

SEE ATTACHED SUPERIOR COURT RULING
CASE NO: SWHSS - 9308

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 4-21-07

My Trip

(SIGNATURE OF PETITIONER)

DECLARATION OF MAILING

I, LORENZO D. TREVIZO, declare:

I am a citizen of the United States, over the age of eighteen years and ~~am~~ a party to the within action;

My legal mailing address is the California Medical Facility,
P.O. Box 2500, Vacaville, CA 95696-2500;

That, on 4-23-, 07, I served a copy of the
foregoing WRIT OF HABEAS CORPUS
by placing said copy in the United States mail at Vacaville,
California, County of Solano, addressed as follows:

Fourth District Court of Appeal Div. 2
3389 12TH STREET
RIVERSIDE, CA 92501

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED at Vacaville, California on 5-7-07, .

Lorenzo D Trevizo
Declarant's Printed Name


Declarant's Signature

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ACIS Case No.:	JUDGE: BOB N. KRUG	DATE: March 14, 2007
CASE NO.:SWHSS – 9308	CLERK: V. GAYTON	COUNSEL:
DEPT.: S-16	BAILIFF: --	

CASE TITLE: In the Matter of the Application of
LORENZO D. TREVIZO
on Habeas Corpus

NATURE OF PROCEEDINGS:

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

MINUTE ORDER:

The Petition for Writ of Habeas Corpus filed with this court on March 12, 2007 seeks to reduce his sentence.

The Petition is denied.

Petitioner entered a plea agreement wherein he agreed to the upper term of three years doubled because of a prior strike. He now contends that the Determinate Sentence law is unconstitutional but fails to provide any authority for this position.

He also argues that his prior strike could not be used to impose the upper term and double his sentence. He is wrong. He got the sentence he agreed to and a prior conviction is not prohibited by Cunningham v. California 127 S. Ct. 856.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO, CENTRAL DISTRICT**

TITLE OF CASE (ABBREVIATED): In the Matter of the Application of
LORENZO TREVIZO
on Habeas Corpus

CASE NUMBER: SWHSS – 9308

DECLARATION OF SERVICE BY MAIL

My business address is: San Bernardino Superior Court, 351 N. Arrowhead Avenue, San Bernardino, California 92415.

I hereby declare that I am a citizen of the United States, over the age of 18, employed in the above-named county, and not a party to nor interested in this proceeding. On March 14, 2007, I deposited in the United States mail at San Bernardino, California, a sealed envelope (postage prepaid) which contained a true copy of the attached:

NAME OF DOCUMENT:

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

which was addressed as follows:

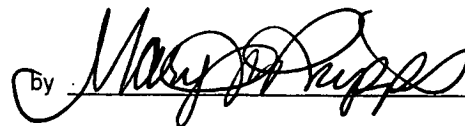
Name and Address of Persons Served:

Lorenzo D. Trevizo, K-90776
C.M.F.
P.O. Box 2500
Vacaville, CA 95696-2500

At the time of mailing this notice there was regular communication between the place of mailing and the place(s) to which this notice was addressed.

I declare under penalty of perjury the foregoing to be true and correct.

DATED: March 14, 2007

by 
Mary Jo Phipps
Judicial Secretary

Name LORENZO D. TREVIJO
 Address CMF P.O. BOX 2500
VACAVILLE, CA 95696-2500

MC-275

CDC or ID Number K-90776

SUPERIOR COURT, COUNTY OF SAN BERNARDINO

STATE OF CALIFORNIA

(Court)

<u>LORENZO D. TREVIJO</u>	
Petitioner	vs.
<u>SUE HUBBARD, Warden, et al.,</u>	
Respondent	

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)

INSTRUCTIONS-READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☐ A conviction ☐ Parole
☒ A sentence ☐ Credits
☐ Jail or prison conditions ☐ Prison discipline
☐ Other (specify): N/A

1. Your name: LORENZO D. TREVENO
 2. Where are you incarcerated? California Medical Facility.
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

SEE EXHIBIT A FOR FULL INFORMATION

- b. Penal or other code sections: Id
 c. Name and location of sentencing or committing court Id

d. Case number: Id

e. Date convicted or committed: Id

f. Date sentenced: Id

g. Length of sentence: Id

h. When do you expect to be released? MARCH 2009

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

SEE EXHIBIT A

4. What was the LAST plea you entered? (check one)

☐ Not guilty ☒ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

N/A

6. **GROUND FOR RELIEF**

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (if you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

See attached pages.....

a. **Supporting facts:**

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

Same as above, See attached pages.....

b. **Supporting cases, rules, or other authority (optional):**

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Supporting Case is cited in attached Ground for relief. See: Attached.

7. Ground 2 or Ground _____ (if applicable):

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"): N/A

b. Result _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☐ Yes. ☐ No. If yes, state the attorney's name and address, if known: _____

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No. If yes, give the following information:

a. Result _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

THIS PETITION CONCERNS A "NEW" RULE OF LAW RECENTLY PRONOUNCED BY THE SUPREME COURT OF

THE UNITED STATES IN CUNNINGHAM Vs. CALIFORNIA, 2007 WDAR 1003.

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App. 3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review.

N/A

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No. N/A

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: N/A

(2) Nature of proceeding (for example, "habeas corpus petition"): N/A

(3) Issues raised: (a) N/A

(b) N/A

(4) Result (Attach order or explain why unavailable): N/A

(5) Date of decision: N/A

b. (1) Name of court: N/A

(2) Nature of proceeding: N/A

(3) Issues raised: (a) N/A

(b) N/A

(4) Result (Attach order or explain why unavailable): N/A

(5) Date of decision: N/A

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) These Cases does not apply. New Rule of law recently pronounced by the U.S. Supreme Court. And un Teague Vs. Lane, 489 U.S. 288 (1979) ("Petitioner "is" entitled to avail himself to releif under NEW DECISIONS.) Also See: Davis Vs. United States, 417 U.S. 333 (1974).

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court. Petitioner Must first submit his Petition to this Court for Ruling.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 2-24-07

Large Fine
(SIGNATURE OF PETITIONER)

MC-275 (Rev. July 1, 2005)

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner In Pro Se.

Page 35 of 51

I

A FACT UNDERLYING AN ENHANCEMENT CANNOT DO DOUBLE DUTY; IT CANNOT BE USED TO IMPOSE AN UPPER TERM SENTENCE AND, ON TOP OF THAT, AN ENHANCED TERM. THEREFORE, THE DETERMINATE SENTENCING LAW IS ARBITRARY AND CAPRICIOUS AND THUS VIOLATES PETITIONER'S SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

Enacted in 1977, the Determinate Sentencing Law ("DSL") replaced an Indeterminate Sentencing regime in force in California for some 60 years. Cunningham v. California, 2001 DJDAR 1003, 1006. Under the prior regime, Courts imposed open-ended prison terms (often one year to life), and the parole board - the Adult Authority - determined the amount of time a felon would ultimately spend in prison. Ibid. In contrast, the DSL fixed the terms of imprisonment for most offenses, and eliminated the possibility of early release on parole. Through the DSL, California's Lawmakers aimed to promote uniform and proportionate punishment. Id.

For most offenses, including Petitioner's, the DSL regime is implemented in the following manner. The statute defining the offense prescribes three precise terms of imprisonment - a lower, middle, and upper sentence. Cunningham, 2007 DJDAR at 1006. Penal Code section 1170(b) ... controls the trial judge's choice; it provides that "the Court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime." Id. "(C)ircumstances in aggravation or mitigation" are to be determined by the Court after consideration of several items; the trial records; the probation officer's report; statements in aggravation or mitigation submitted by the

parties, the victim, or the victim's family; "and any further evidence introduce at the sentencing hearing." Id.

Restating section 1170(b), the Council's Rules provide that "(T)he middle term shall be selected unless imposition of the upper or lower term is justified by circumstances in aggravation or mitigation." Rule 4.420(a). "Circumstances in aggravation," as crisply defined by the Judicial Council, means "facts which justify the imposition of the upper prison term." Rule 4.405(d) (Emphasis added) Facts aggravating an offense, the Rule instruct, "shall be established by a preponderance of the evidence," Rule 4.420(b), and must be "stated orally on the record." Rule 4.420(e). Cunningham, 2007 DJDAR at 1006.

The Rules provide a nonexhaustive list of aggravating circumstances, including "(F)acts relating to the crime," Rule 4.421(a), "(F)acts relating to the defendant," Rule 4.421(b), and "(A)ny other facts statutorily declared to be circumstances in aggravation," Rule 4.421.(c). Beyond the enumerated circumstances, "the judge is free to consider any 'additional criteria reasonably related to the decision being made.'" 2007 DJDAR at 1006. "A fact that is an element of the crime," however, "shall not be used to impose the upper term." Id.

While the Rules list "(G)eneral objectives of sentencing," Rule 4.410(a), nowhere are these objectives cast as "circumstances in aggravation" that alone authorize an upper term sentence. The Rules also state that "(T)he enumeration ... of some criteria for the making of discretionary sentencing decisions does not prohibit the application of additional

criteria reasonably related to the decision being made." Rule 4.408(a). California courts have not read this language to unmoor "circumstances in aggravation" from any factfinding anchor. In line with the Rules, the California Supreme Court has repeatedly referred to circumstances in aggravation as facts. *See*, e.g., Black, 35 Cal. 4th at 1256 ("The legislature did not identify all of the particular facts that could justify the upper term." (Emphasis added)); People v. Wiley, 9 Cal. 4th 580, 587 (1995) ("(T)rial courts are assigned the task of deciding whether to impose an upper or lower term of imprisonment based upon their determination whether there are circumstances in aggravation or mitigation on the crime, a determination that invariably requires numerous factual findings." (Emphasis added and internal quotation marks omitted)).

Notably, the Penal Code permits elevation of a sentence above the upper term based on specified statutory enhancements relating to the defendant's criminal history or circumstances of the crime. *See*, e.g., Penal Code section 667 et seq. (West Supp. 2006); section 12022 et seq. *See also Black*, 35 Cal. 4th at 1257. Unlike aggravating circumstances, statutory enhancements must be charged in the indictment, and the underlying facts must be proved to the jury beyond a reasonable doubt. Penal Code section 1170.1(e); Black, 35 Cal. 4th at 1257. A fact underlying an enhancement cannot do double duty; it cannot be used to impose an upper term sentence and, on top of that, an enhanced term. Penal Code section 1170(b). Where permitted by statute, however, a judge may use a fact qualifying as an enhancer to impose an

upper term rather than an enhance sentence. Ibid.; Rule 4.420(c).

1. A STATE-CREATED IMPEDIMENT HAS BEEN LIFTED
AND THEREFORE THE DETERMINATE SENTENCING
LAW'S ENHANCEMENT PROVISION IS VULNERABLE
TO A CONSTITUTIONAL CHALLENGE

The Supreme Court has Ruled that under the Sixth and Fourteenth Amendments, any fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence. Cunningham v. California, 2007 DJDAR 1003, 1007 (Holding that "(T)he DSL, by placing Sentencing-Elevating Factfinding within the judge's province, violates a defendant's Right to trial by jury safeguarded by the Sixth and Fourteenth Amendments.") Id. at 1005. The provision, which has been utilized by Petitioner's sentencing judge, that allowed the Court to impose an upper, and an enhanced term, has been invalidated as unconstitutional. Rule 4.420(c), Cunningham, 2007 DJDAR at 1007. Thus, the enhancement(s) that were used to impose the upper term at Petitioner's sentencing, as well as an enhanced term amounts to an arbitrary exercise of Government and is fundamentally unfair. Hurtado v. California, 110 U.S. 516, 527 (1884) (The fundamental core of Due Process is protection against arbitrary action), quoting Bank of Columbia v. Oakley, 17 U.S. 235, 244 4 Wheat. 235-244, 4 L. Ed. 449 (1819) (Due Process Clause was "intended to secure the individual from the arbitrary exercise of the powers of Government.") Cunningham, 2007 DJDAR at 1007 (The DSL violates the Fourteenth Amendment); See also Ruimveld v. Birkett, 404 F3d 1006, 1010 (6th Cir Cir.2005) ("(T)he legal principles and standards flowing from (Supreme

Court) precedent" qualify as "clearly established law" under the AEDPA.); Wiggins v. Smith, 539 U.S. 510, 520 (2003)(A governing legal principle can be applied to a set of facts different from those of the case in which the principle was announced); Teague v. Lane, 489 U.S. 288 (1979); Davis v. United States, 417 U.S. 333 (1974); Kaufman v. United States, 394 U.S. 217, 341-342 (1969) (Petitioner is entitled to avail himself to relief under new decisions), or New Rules of Law as pronounced by the Supreme Court of the United States.

In 2004, the District Attorney filed an indictment against Petitioner in case No. FWV031741. (See Attached Documents, Exhibit-A.) Petitioner sustained a conviction (By Plea Bargain ~~on~~ ~~Drop~~ ~~trial~~) and the sentencing judge used "facts" based on the preponderance of the evidence, See Sentencing Transcripts/Related Documents-Exhibit-B, to impose the upper term sentence and, on top of that, an enhanced term. Thus, Petitioner's sentence is unlawful as his Sixth and Fourteenth Amendment Rights are not satisfied. See, e.g., Blakely, 543 U.S. at 305, and n.8. Hence, because the DSL authorized the judge to find facts permitting an upper term sentence, and an enhanced term, the system is arbitrary, capricious, and fundamentally unfair as it violates Petitioner's Sixth and Fourteenth Amendment Rights.

//

///

////

CONCLUSION

WHEREFORE, Petitioner prays that this Court:

1) Find that Petitioner's Sixth and Fourteenth Amendment Rights to trial by Jury were violated, as the trial Court imposed an *upper term*, and an *enhanced term* sentence upon Petitioner in excess of the relevant statutory maximum as this action was arbitrary, capricious, and fundamentally unfair;

2) Find that the DSL Sentencing Scheme is arbitrary, capricious, and fundamentally unfair as it mandated the trial Court to impose an *upper term*, and an *enhanced term* sentence upon Petitioner in excess of the relevant Statutory Maximum;

3) Enter a Declaration that the DSL Sentencing Scheme violated the Rights of Defendants since 1977, by placing Sentence-Elevating factfinding within the trial Judge's province, violating a Defendant's Right to *trial by Jury* safeguarded by the Sixth and Fourteenth Amendments to the United States Constitution;

4) Invalidate all Sentence enhancements imposed upon Petitioner unlawfully; and,

5) And such other relief as this Honorable Court deems appropriate and in the Interest of Justice.

Dated: 2-24-07

Respectfully submitted,

/s/

Forrest J. J. J.

In Propria Persona

EXHIBIT # A

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO
 COURT ID. 36110 BRANCH Rancho CASE NUMBER(S) FWV031741 -A
 PEOPLE OF THE STATE OF CALIFORNIA versus LORENZO DELGADO TREVIJO ☒ PRESENT
 DEFENDANT AKA: AKA: ☐ NOT PRESENT
 COMMITMENT TO STATE PRISON AMENDED ABSTRACT ☐ ENTERED INTO DBS
 DATE OF HEARING (MO) (DAY) (YR) 031805 DEPT. NO. R10 JUDGE GERARD S BROWN CLERK Kim Pematt
 REPORTER Colleen Southwick COUNSEL FOR PEOPLE C Pilchman by T Colclough COUNSEL FOR DEFENDANT Wayne Rozenberg PROBATION NO. OR PROBATION OFFICER

1. DEFENDANT WAS CONVICTED OF THE COMMISSION OF THE FOLLOWING FELONIES (OR ALTERNATE FELONY / MISDEMEANORS):

☐ ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT (NUMBER OF PAGES)

<input type="checkbox"/> ADDITIONAL COUNTS ARE LISTED ON ATTACHMENT _____ (NUMBER OF PAGES) _____				YEAR CRIME COMMITTED	DATE OF CONVICTION			CONVICTED BY			TERM (L, N, U)	CONCURRENT	CONSECUTIVE TO VIOLENT	CONSECUTIVE TO NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCES DEFERRED	94 DAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED
COUNT	CODE	SECTION NUMBER	CRIME		MO	DAY	YEAR	JURY TRIAL	COURT TRIAL	PLEA								
1	PC	12021.1	CONCEALED WEAPON	03	18	05				U	Principal							6

2. ENHANCEMENTS charged and found true TIED TO SPECIFIC COUNTS (mainly in the § 12022-series) including WEAPONS, INJURY, LARGE AMOUNTS OF CONTROLLED SUBSTANCES, BAIL STATUS, ETC.:

For each count list enhancements horizontally. Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add up time for enhancements on each line and enter line total in right-hand column.

Count	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Total

3. ENHANCEMENTS charged and found true FOR PRIOR CONVICTION OR PRIOR PRISON TERMS (mainly § 667-series) and OTHER:

List all enhancements based on prior convictions or prior prison terms charged and found true. If 2 or more under the same section, repeat it for each enhancement (e.g., #2 non-violent prior prison terms under § 667.5(b) list § 667.5(b) 2 times). Enter time imposed for each or 'S' for stayed or stricken. DO NOT LIST enhancements charged but not found true or stricken under § 1385. Add time to these enhancements and enter total in right-hand column. Also enter here any other enhancement not provided for in space 2.

Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Enhancement	Yrs or 'S'	Total

4. INCOMPLETED SENTENCE(S) CONSECUTIVE:

COUNTY	CASE NUMBER	CREDIT FOR TIME SERVED

5. Other orders: PC 1202.4(b) Restitution Fine \$ 200
 payable to the Restitution Fund to be collected by the Dept of Corrections.
 PC 1202.45 - Restitution Fine \$ 200 stayed pending
 successful completion of parole.

☐ Sentence to run concurrent to
☒ Sentenced per PC 1170.12(c)/667(e)(1)

6. TOTAL TIME IMPOSED ON ALL ATTACHMENT PAGES (FORM DSL 290-A):

7. TOTAL TIME TO COMPLY WITH 5-YEAR OR 10-YEAR LIMIT ON SUBORDINATE TERMS, DOUBLE-BASED-TERM-LIMIT, ETC. (Do not include § 654 days or discretionary stays of term for enhancements.)

8. TOTAL TERM IMPOSED:

9. EXECUTION OF SENTENCE IMPOSED:

☒ AT INITIAL SENTENCING HEARING B. ☐ AT RESSENTENCING PURSUANT TO DECISION ON APPEAL C. ☐ AFTER REVOCATION OF PROBATION D. ☐ AT RESSENTENCING PURSUANT TO RECALL OF COMMITMENT (PC §1170(D)) E. ☐ OTHER

10. DATE OF SENTENCE PRONOUNCED (MO) (DAY) (YR)	CREDIT FOR TIME SPENT IN CUSTODY	TOTAL DAYS	ACTUAL LOCAL TIME	LOCAL CONDUCT CREDITS	STATE INSTITUTIONS
<u>03 18 05</u>		<u>357</u> INCLUDING:	<u>238</u>	<u>119</u>	<input type="checkbox"/> DMH <input type="checkbox"/> CDC

11. DEFENDANT IS REMANDED TO THE CUSTODY OF THE SHERIFF, TO BE DELIVERED:

☒ FORTHWITH INTO THE CUSTODY OF THE DIRECTOR OF CORRECTIONS AT THE RECEPTION-GUIDANCE CENTER LOCATED AT:
☐ AFTER 48 HOURS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS
☐ CALIF. INSTITUTION FOR WOMEN - FRONTIERA ☐ CALIF. MEDICAL FACILITY-VACAVILLE ☒ CALIF. INSTITUTION FOR MEN - CHINO ☐ DEUEL VOC. INST.
☐ SAN QUENTIN ☐ OTHER (SPECIFY)

CLERK OF THE SUPERIOR COURT

I hereby certify the foregoing to be a correct abstract of the judgement made in this action.

DEPUTY'S SIGNATURE

Maria Cassano

03/21/05

This form is prescribed under Penal Code § 1213.5 to satisfy the requirements of § 1213 for determinate sentences. Each court must refer to this document.

ABSTRACT OF JUDGMENT - PRISON COMMITMENT

FORM DSL 290

No Probation Report

EXHIBIT # B

~~CONFIDENTIAL - LEGAL COUNSEL~~
~~CONFIDENTIAL - LEGAL COUNSEL~~

Lorenzo Trevizo
Plaintiff,

v
SUE HUBBARD, WARDEN
Defendants.

CASE NO.: CIV.

PROOF OF SERVICE

I, the undersigned, hereby certify that I am over the age of eighteen years and am a party to the above entitled action. On Sept 7-10-, 2007, I served:

WRIT OF HABEAS CORPUS

by placing said documents in a postage paid envelope addressed to the person (s) hereinafter listed, by handing said postage paid envelope to a CDC Officer who, in the presence of me, Plaintiff, inspected/searched said envelope for prohibited material. The CDC Officer examining said envelope, signed their full last name across the seal and retained possession of said envelope for processing as outgoing legal mail via the United States Mail.

(List of persons served in this action).

~~CONFIDENTIAL - LEGAL COUNSEL~~
~~CONFIDENTIAL - LEGAL COUNSEL~~
~~CONFIDENTIAL - LEGAL COUNSEL~~
~~CONFIDENTIAL - LEGAL COUNSEL~~

CALIFORNIA SUPREME COURT
SAN FRANCISCO OFF.
350 McAllister ST.
SAN FRANCISCO, CA. 94102-7303

I, LORENZO TREVIZO, declare, under the penalty of perjury, that the foregoing is true and correct. Dated: 7-10-07

Lorenzo Trevizo
Pro Se Litigant

DECLARATION OF MAILING

I, LORENZO D. TREVIJO, declare:
PRINT NAME HERE

I am a citizen of the United States, over the age of
eighteen years and ~~am~~ a party to the within action;

My legal mailing address is the California Medical Facility,
P.O. Box 2500, Vacaville, CA 95696-2500;

That, on 3-3-, 07, I served a copy of the
foregoing PETITION FOR WRIT OF HABEAS CORPUS WITH EXHIBITS.

by placing said copy in the United States mail at Vacaville,
California, County of Solano, addressed as follows:

NAME OF SUPERIOR COURT: SAN BERNARDINO, MAIN
AND ADDRESS:

351 N. ARROWHEAD

SAN BERNARDINO, CA 92415

I declare under penalty of perjury that the foregoing is
true and correct.

EXECUTED at Vacaville, California on

3-3-07

3-2-07

LORENZO D. TREVIJO
Declarant's Printed Name
PRINT NAME HERE

Lorenzo Trevijo
Declarant's Signature

9. If I violate any of the above conditions in paragraph 16a-16f, I then agree, the court will no longer be bound by this plea bargain and I will not have any right to withdraw my plea. I further understand and agree that any withdrawal of these terms will be decided by the sentencing judge without a jury and by a preponderance of the evidence. I further understand and agree, that if the court finds any willful violation of these terms, the court will be free to impose any greater sentence than expressly stated in this agreement, up to the maximum penalty for each offense and enhancement to which I am pleading guilty/no contest or admitting, and I will not have any right to withdraw my plea.

17. **Vargas Waiver** (if applicable) I understand that I am being sentenced today pursuant to the initial terms stated in paragraph 9. If I comply with the conditions set forth in numbers 16a, 16b, 16c, 16d, 16e and 16f, and any other terms as ordered, the court will resentence me pursuant to the remainder of the terms described in paragraph 9. ☒ 17.
18. **(Arbuckle Waiver)** I understand that I have the right to be sentenced by the judge who accepted my plea, but I agree that any judge of the superior court may impose sentence in this case. ☒ 18.
19. I have had sufficient time to consult with my attorney concerning my intent to plead guilty/no contest to the above charge(s) (and admit any prior conviction or enhancement). My lawyer has explained everything on this declaration to me, and I have had sufficient time to consider the meaning of each statement. I have personally placed my initials on certain boxes on this declaration to signify that I fully understand and adopt as my own each of the statements which correspond to those boxes. ☒ 19.
20. I waive and give up any right to appeal from any motion I may have brought or could bring and from the conviction and judgment in my case since I am getting the benefit of my plea bargain. ☒ 20.
21. a. I can read and understand English. ☒ 21a.
OR
b. I cannot read/understand English, but I have had the assistance of an interpreter to read this form to me and I now understand all the contents of this form. ☒ 21b.
22. (If applicable) I understand that a plea of no contest is the same as a plea of guilty in this criminal case and for all purposes has the same consequences as a plea of guilty and can be used against me in a civil lawsuit. ☒ 22.

I declare under the penalty of perjury that the foregoing is true and correct and that I am signing this declaration on 3-18-05, 19 05, at San Diego, California.

W. R. S.
Defendant's Signature

CERTIFICATE OF INTERPRETER: I declare under the penalty of perjury that I translated the entire contents of this form from English to _____ (language) in the presence of and directly to the defendant in this case and that said defendant in this case subscribed to this document in my presence.

Date

Interpreter's Signature

ATTORNEY STATEMENT: I, W. R. S., state that I am above-named defendant's attorney in the above-entitled criminal action; that I personally read and explained the contents of the above declaration to the defendant; that I personally observed the defendant sign said declaration; that I concur in the defendant's withdrawal of his/her plea(s) of not guilty; and that I concur in the defendant's plea(s) of guilty/nolo contendere (no contest) and/or admissions to the charge(s) as set forth by the defendant in the above declaration.

3-18-05
Date

W. R. S.
Attorney for Defendant

3-18-05
Date

Approved: S. Q. S.
Deputy District Attorney

ORDER

(Read these findings orally into the record)

After directly examining the defendant, the court finds:

- ☐ 1. The defendant has read and understands the DECLARATION BY DEFENDANT.
☐ PURSUANT TO PENAL CODE SECTION 859A ☐ RE CHANGE OF PLEA (GUILTY).
- ☐ 2. That the defendant understands the nature of the crime(s) charged against him/her and the consequences of his/her guilty/nolo contendere plea(s) (and admissions).
- ☐ 3. That the defendant understandingly and intelligently waives his/her constitutional rights.
- ☐ 4. The defendant is personally and orally entering his/her plea of guilty/no contest (and admission(s)) to the offense(s).
- ☐ 5. That the defendant's plea(s) of guilty/no contest (and admission(s)), is/are free and voluntary.
- ☐ 6. That a factual basis exists for the plea(s) of guilty (and admission(s)), and/or that the plea bargain is hereby approved.
- ☐ 7. That the defendant personally waives his/her right to have his/her probation hearing and pronouncement of judgment within 20 court days.
- ☐ 8. (For 859a only) Plea confirmed in superior court.

It is ordered that this Declaration by Defendant be received and filed with the court's records of this case and that the defendant's plea(s) of guilty/no contest (and admission(s)) be accepted and entered in the minutes of this court.

Dated this 18 day of March, 19 05

[Signature]
Judge

- ☒ Forthwith sentence
☐ Pronouncement of judgment will be set on _____ at _____ m. in Department _____
☐ Resentencing (Vargas) will be set on _____ at _____ m. in Department _____

- IF I plead guilty to any sex crime covered by Penal Code Section 290, I will be required to register as a sex offender with the chief of police of the city in which I reside or the sheriff of the county if I reside in an unincorporated area.
- g. Federal and state law prohibit a convicted felon from possessing a firearm. ☐ 6f.
7. As to each crime, enhancement, and/or prior conviction, I now intend to plead guilty/nolo contendere (no contest) and/or admit to:
- a. I waive and give up each of the above constitutional rights listed in paragraph 5. ☐ 6g.
8. a. I understand that the court will not decide whether to impose sentence or extend probation until a probation officer conducts an investigation and reports on my background, prior record (if any), and the circumstances of the case. ☒ 7a.
- b. I understand that if I am now on probation/parole, my plea if guilty/nolo contendere (no contest) in this case may constitute a violation of my probation/parole and result in its revocation and the imposition of sentence. ☒ 8a.
9. I am freely and voluntarily entering the plea(s) of guilty/nolo contendere [and admission(s)] as indicated: ☐ 8b.
- a. Because I am guilty (and for no other reason), and/or ☒ 9a.
- b. As a result of plea bargaining after discussing with my attorney the possibility of my being convicted on other or more serious charges and/or risking the possibility of a longer sentence, and/or ☐ 9b.
- c. Because the ☒ district attorney/ ☐ court has agreed to: ☐ 9c.
- PC 117012 (a) - (d) / 66-7(b) STRIKE Enhancement
FOR TOTAL of 1 year
PC 117012 (a) - (d) / 66-7(b) STRIKE Enhancement
FOR TOTAL of 1 year
PC 117012 (a) - (d) / 66-7(b) STRIKE Enhancement
FOR TOTAL of 1 year
- d. ☐ Eligible for Weekender/Work Release Program. Complete by 03/18/08 238-9941 ☐ 9d.
10. My attorney explained to me that other possible consequences of this plea and any admission of any enhancement(s) and/or any prior conviction(s) may be: (Circle possible consequences): ☐ 10.
- (a) Mandatory/presumptive prison sentence (f) Loss of driving privileges
 (b) Increased punishment for future felonies (g) Registration as an arson offender
 (c) Serious/violent felony (strike) (h) Required to submit to HIV test
 (d) Reduced earning of custody credits (i) Civil/asset forfeiture consequences per H&S 11469, et seq.
 (e) Sexual Violent Predator Act (j) Other: _____
11. Except otherwise stated herein, no one has promised or suggested to me that I will receive a lighter sentence, probation, reward, immunity, or anything else to get me to plead guilty/nolo contendere (no contest) as indicated. ☐ 11.
12. No one has used any force or violence or threats or menace or duress or undue influence of any kind on me or anyone dear to me to get me to plead guilty/nolo contendere (no contest) as indicated. ☐ 12.
13. I am not now under the influence of alcohol, or of any drugs, narcotics, medicine, or any other substance which could interfere with my ability to understand what I am doing; nor am I suffering from any condition which could have that effect. ☐ 13.
14. I understand that if I am not a citizen of the United States, deportation, exclusion from admission to the United States, or denial of naturalization may result from a conviction of the offense(s) to which I plead guilty/nolo contendere (no contest). ☐ 14.
15. a. I understand that even though the court may approve the agreement for sentence set forth, the court is not bound by the agreement, and that the court may withdraw its approval at any time before pronouncement of judgement, in which case I shall be able to withdraw my plea should I desire to do so. ☐ 15a.
- b. I also understand the agreement for sentence set forth herein is expressly conditioned upon the representations made to the court re: facts of my case and my background. I understand that if the probation report reveals facts about my case or facts about my background materially different from what has been reported to the court, the court will no longer be bound by the agreement and may then sentence me based upon the actual facts [per People v. Jackson (1980) 103 Cal.App.3d 635]. ☐ 15b.
- c. I understand that any agreement as to sentence applies only in the original sentence and that a violation of probation may cause the court to send me to county jail or state prison for the maximum term provided by law. ☐ 15c.
- d. (Harvey Waiver) I waive my rights regarding dismissed counts and any charges the district attorney agrees not to file to the extent that the court may consider these factors in deciding whether or not to grant probation and in deciding whether or not to impose a midterm, aggravated, or mitigated prison term, and as to restitution. ☐ 15c.
16. Cruz Waiver (if applicable) I understand I have an absolute right under California law to withdraw my plea if the court, for any reason, does not follow the plea bargain agreement. I also understand that I cannot receive any additional penalty or punishment for any subsequent failure to appear or any new offense unless I am properly charged and convicted of such an offense. I understand and agree as part of this plea bargain agreement to be released upon my own recognizance and to waive these rights, and as a condition of my release, I will: ☒ 16.
- a. Report to the probation department as ordered by the court. ☒ 16a.
- b. Keep any appointment(s) set by the probation department. ☒ 16b.
- c. Appear in court for sentencing, or any other date set by the court. ☒ 16c.
- d. Not violate any law (excluding infractions) between today and the date of sentencing. ☒ 16d.
- e. Submit to Bravo search terms. ☒ 16e.
- f. _____ ☒ 16f.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO
DISTRICT**

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

LORENZO TREVIÑO

Defendant.

Case No. FWV 031741

DECLARATION BY DEFENDANT

☐ Under Penal Code Section 859a☒ Re: Change of Plea (Guilty)1. My true name is LORENZO TREVIÑO born 11/29/19782. The Information filed herein accuses me of the offense(s) of:

PC 12021.1 VC 2800.2 PC 496(a) HS 11378 HS
11370.1(a) VC 2000.2(a)

3. I desire to change my plea(s) and plead guilty/nolo contendere (no contest) to (and admit the following enhancement(s) or prior(s)): Including lesser offense(s) to which plea to be made and the maximum sentence.

Count(s)	Code Section	Name of Offense	Sentencing Range
1	PC 12021.1	FELONY POSS. OF FIRE ARM	16-23
2	VC 2800.2(a)	EVADING POLICE OFF. WILLFUL DISOBEY	16-23
1 & 2	PC 1170.12(a) - (d) & 667(b)	SERIOUS / VIOLENT PRIOR CONVICTION	

4. a. I understand that the law allows me to enter a guilty plea to a magistrate; but that as soon as I do so, my case will be transferred to the superior court, which will then have complete control over every aspect of it.

☒ For 859a

b. I further understand that even after I plead guilty, I will retain my right to be released on reasonable bail, but that all questions concerning bail will be determined by a judge of the superior court.

☒ For 859a

5. I understand that as to each charge, prior conviction, and/or enhancement alleged against me in this case, I have many rights, including the constitutional right to:

a. A speedy and public trial by jury or by a judge without a jury;

☒

b. Be represented by an attorney at trial and at all stages of the proceeding; and if I cannot afford an attorney, the court will appoint an attorney to represent me at no charge. However, a judge may later direct me to pay such part of the cost of the attorney as the judge determines that I am able to pay;

☒

c. See, hear, and question all witnesses who testify against me at trial;

☒

d. Have the judge order into court all the evidence and order my witnesses to attend the trial without cost to me;

☒

e. Present evidence in my favor at trial;

☒

f. Remain silent at trial, or, if I wish, testify for myself; and

☒

g. (If applicable) A preliminary hearing at which the district attorney would have to show that there was sufficient cause that I had committed the offense(s), and the right at such hearing to be represented by an attorney, to see, hear, and question all witnesses who testify against me, and to present evidence in my favor if I so desire, and to either testify or remain silent.

☒

For 859a

6. a. I understand that in addition to any other punishment, I shall be required to pay a mandatory restitution fine of not less than \$200 nor greater than \$10,000 and subject to a penal fine up to \$10,000 (\$20,000 for Health & Safety Code §§ 11350-11353, 11355, 11359-11361 or \$50,000 for Health and Safety Code § 11379.6 or Arson, Penal Code §§ 451-455) whether probation is granted or denied.

☒

b. Any state prison commitment will be followed by a period of PAROLE of 3 to 4 years, 5 to 7 years, or life. Any violation of the terms of parole could result in up to an additional year in custody for each violation, up to a maximum of 4 years, 7 years, or life. (Circle appropriate parole.)

☒

c. IF I am found to be addicted to the use of narcotics or in the imminent danger of becoming so addicted, I may be committed to the Department of Corrections Narcotic Rehabilitation Program for a period of time equal to that which I would otherwise have to spend in state prison.

☒

d. IF I plead guilty to any drug offense covered by Health & Safety Code Section 11590, I will be required to register as a controlled-substance offender with the chief of police of the city in which I reside or the sheriff of the county if I reside in an unincorporated area.

☒

e. IF a motor vehicle is found to be involved in or incidental to the commission of the offense, my driving privileges may be revoked by the court and/or Department of Motor Vehicles.

☒

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CASE No.

PROOF OF SERVICE

I, the undersigned, hereby certify that I am over the age of eighteen years and am not a party to the above entitled action.

On 3-12-, 08, I served a copy of Writ of HABEAS CORPUS

by placing said copy in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the United States Mail:

(List all person(s) served in this action.)

Clerk of U.S. District Court, Room 4290
880 FRONT STREET,
SAN DIEGO, CA. 92101-8900.

I declare, under the penalty of perjury, that the foregoing is true and correct.

DATED: 3-12-08

[Signature]
Declarant's signature

Lorenzo Trevizo
Declarant's printed name

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Lorenzo D. Trevizo

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Solano
(EXCEPT IN U.S. PLAINTIFF CASES)

2354	1983
FILING FEE PAID	DEFENDANTS
Yes	No
HTP MOTION FILED	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)
Yes	No
COPIES SENT TO Court	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND
Yes	No

Knowles

FILED

MAR 17 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Lorenzo D. Trevizo
PO Box 2500
Vacaville, CA 95696
K-90776

'08 CV 0493 DMS BLM

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | PT | DEF | PT | DEF |
|--|--|----------------------------|----------------------------|
| <input type="checkbox"/> 1 Citizen of This State | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 Citizen of Another State | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	PERSONAL PROPERTY	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395R)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(e))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 740 Railway Labor Act	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 530 General	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> Security Act		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights			<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 3/17/2008

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]**cl*